



United States
Department of
Agriculture

Agricultural
Marketing
Service

STOP 0253-Room 2610-S
1400 Independence Avenue, SW
Washington, DC 20250

August 2002

APPENDIX 1

ANNUAL CERTIFICATIONS, REPRESENTATIONS, AND WARRANTIES

ANNOUNCEMENT LS-89

FROZEN, BREADED, CATFISH PRODUCTS

Certifications, Representations, and Warranties

THESE CERTIFICATIONS CONCERN MATTERS WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER THE UNITED STATES CODE, INCLUDING TITLE 18, U.S.C. SECTION 1001.

This Appendix is incorporated by reference in Announcement LS-89 (Announcement) and must be submitted to the Contracting Officer so that a determination of responsibility can be made with respect to offers submitted in response to invitations issued under the Announcement. The Livestock and Seed Program of the Agricultural Marketing Service (LS-AMS) will retain this Appendix on file as the Offeror's certifications, representations, and warranties for subsequent invitations for offers under the Announcement. By signing an offer under the Announcement, the Offeror certifies and warrants that the Appendix on file with LS-AMS is current. Offerors are responsible for updating this Appendix as may be necessary prior to, or with any applicable offer submitted.

A false certification may result in rejection of an offer, suspension or debarment, termination of the contract, liability for damages under the provisions of USDA-1, or criminal prosecution.

1. Notice of Requirements for Certification of Nonsegregated Facilities

By signing an offer under this Announcement, the Offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" of article 31 of USDA-1.

2. Responsibility of Offeror

- A. Offeror certifies that the producing plant(s) specified in offer is a facility(s) operating under the provisions of the Federal Meat Inspection Act (FMIA), 21 U.S.C. 601 et seq., and the regulations issued thereunder OR is a facility(s) operating under the State-Federal Cooperative Agreement, (section 301 of FMIA);
- B. Offeror agrees to include the certifications in paragraph A above in all applicable subcontracts.
- C. Offeror shall assure that fish products furnished by a subcontractor/supplier comply with all material, microbiological and other specification requirements as set forth in the applicable product specification.
- D. Offeror agrees to include the certifications in paragraphs A, B, and C above (substituting the word "subcontractor" for "offeror") in all applicable subcontracts.

3. Buy American Certification

By submitting an offer, the Offeror certifies that all end products are of domestic origin as defined in section I.F. of the Announcement. This provision is a deviation from 48 C.F.R. Part 25.

4. Domestic Products Certification**A. Responsibility**

1. The Offeror agrees to deliver only end products originating from fish landed by American flag vessels and must be United States as defined in section I.F. of the Announcement. Additionally, offeror agrees that other minor ingredients will be United States produced, unless such product is not manufactured in the United States.
2. The Offeror agrees to obtain approval of its domestic origin program prior to performance on USDA contracts for compliance with the domestic product requirements as defined in I.F. of the Announcement.
3. The Offeror agrees to include section I.F. "Domestic Products" in its entirety in all subcontracts for agricultural supplies used in fulfilling any contracts awarded under this Announcement.
4. The Offeror agrees to maintain records including, but not limited to, invoices, production, and inventory records evidencing product origin; and to make such records available for review by the Government in accordance with Article 76 of USDA-1.

- B. In making each shipment under the contract, the Contractor is certifying that all products delivered to USDA under the contract are domestic as defined in section I.F. of the Announcement.

5. Taxpayer Identification Number (TIN)

Prior to submitting an offer, offerors must submit a Taxpayer Identification Number (TIN) as required by FAR at 48 C.F.R. 52.204-3.

A. Definitions

“Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- B. All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with the debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- C. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

D. Taxpayer Identification Number (TIN)

☐ TIN: _____

☐ TIN has been applied for

E. Type of Organization

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (non tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or Local);

☐ Foreign government;

☐ International organization per 26 C.F.R. 1.6049-4;

☐ Other: _____

F. Common Parent –(Circle One)

Offeror **(IS) (IS NOT)** owned or controlled by a common parent as defined in paragraph 5.A. of this section.

Name and TIN of common parent:

Name: _____

TIN: _____

6. **Data Universal Numbering System (DUNS) Number**

Offeror must provide the nine-digit DUNS number assigned by the Dun and Bradstreet Information Services as required by FAR at 48 C.F.R. 52.204-6.

DUNS NO: _____

7. Small Business Program Representation**A. The North American Industry Classification System (NAICS) Code**

1. The NAICS Code for this acquisition is 311611.
2. For the frozen packaged fish industry, a business with less than 500 employees is classified as a small business under the Small Business Act.
3. The small business size standard for a concern which submits an offer in its own name, other than a construction or service contract, but which proposes to furnish a product which it did not itself manufacture is 500 employees.

B. Definition

“Small Business Concern” as used in this provision means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 C.F.R. part 121 and the size standard in paragraph A.2. of this provision.

C. Representation (Circle One)

The offeror represents as a part of this offer that it **(IS) (IS NOT)** a small business concern.

D. Notice of Total Small Business Set-Aside (Applicable if procurement is a Total Small Business Set-Aside)

- (1) Offers are solicited only from small business concerns. Offers received from concerns that do not qualify as small business concerns will be considered nonresponsive and will be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained.
- (2) Any award resulting from this solicitation will be made to a small business concern.

E. Agreement

A manufacturer or nonmanufacturer submitting an offer in its own name warrants delivery of only small business set-aside end items manufactured or produced by small business concerns inside the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands.

8. HUBZone Small Business Concern Representation (Circle One)

Offeror represents, as part of its offer, that it **(IS) (IS NOT)** a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

It **(IS) (IS NOT)** a joint venture that complies with the requirements of 13 CFR § 126, and the representation made in the above paragraph is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. List the name or names of the HUBZone small business concern or concerns that are participating in the joint venture. _____ . Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

9. Small Disadvantaged Business Concern Representation (Circle One)

Offeror **(IS) (IS NOT)** a small disadvantaged business concern as defined in the "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" clause of article 45 of USDA-1

10. Veteran-Owned Small Business Representation (Circle One)**A. Definition**

“Veteran-owned small business,” as used in this in this provision, means that no less than 51 percent of which is owned by one or more veterans (as defined in 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more veterans.

B. Offeror **(IS) (IS NOT) a veteran-owned small business as defined in FAR 219.1(b)(5).****11. Service-Disabled Veteran-Owned Small Business Representation (Circle One)****A. Definitions**

“Service-disabled veteran,” as used in this provision, means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16)).

“Service-disabled veteran-owned small business,” as used in this provision, means that not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and the management and daily business operations of which are controlled by one or more service-disabled

veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

- B. Offeror **(IS) (IS NOT)** a service-disabled veteran-owned small business as defined in FAR 219.9(b)(5).

12. Women-Owned Small Business Representation (Circle One)

Offeror **(IS) (IS NOT)** a women-owned small business concern as defined in the "Utilization of Women-Owned Small Businesses" clause of article 42 of USDA-1.

13. Contingent Fee Representation (Circle Option at A and B)

The Offeror represents that, except for full-time bona fide employees working solely for the Offeror, the Offeror

- A. **(HAS) (HAS NOT)** employed or retained any person or company to solicit or obtain this contract; and
- B. **(HAS) (HAS NOT)** paid or agreed to pay to any person or entity employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

14. Affirmative Action Compliance (Circle Option at A and B)

Offeror represents that it:

- A. **(HAS) (HAS NOT)** developed and **(HAS) (DOES NOT HAVE)** on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. subparts 60-1 and 60-2); and
- B. **(HAS) (HAS NOT)** previously had contracts subject to the written affirmative action program requirement of the rules and regulations of the Secretary of Labor.

15. Previous Contracts and Compliance Reports (Circle Option at A and B)

Offeror represents that it:

- A. **(HAS) (HAS NOT)** participated in a previous contract or subcontract subject either to the "Equal Opportunity" clause in article 41 of USDA-1, the clause originally contained in section 310 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 11114;
- B. **(HAS) (HAS NOT)** filed all required compliance reports; and
- C. **WILL** obtain representations indicating submission of required compliance reports signed by proposed subcontractors prior to subcontract awards.

**16. Certificate of Independent Price Determination
(Check A or B and Insert Name of Principal)**

- A. _____ Offeror certifies that the person submitting bids under this Announcement, as identified in **section 18**, is the person in the Offeror's organization responsible for determining the prices being offered in bids and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of the "Certificate of Independent Price Determination" clause of article 30 of USDA-1; or
- B. _____ Offeror certifies that the person submitting bids under this Announcement, as identified in **section 18**, is an authorized agent for (Name of Principal, _____) and does certify that the principal named above has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3); and that he or she as agent, has not personally participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of the "Certificate of Independent Price Determination" clause of article 30 of USDA-1.

17. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Circle Option at (1) (a), (b), and (c) and (2))

- A. The Offeror certifies, to the best of its knowledge and belief, that:
- (1) The Offeror and/or any of its principals:
- (a) **(ARE) (ARE NOT)** presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- (b) **(HAVE) (HAVE NOT)**, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
- (c) **(ARE) (ARE NOT)** presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision A(1)(b) of this provision.
- (2) (A) The Offeror, aside from the offenses enumerated in subdivisions A(1)(a), (b), and (c) of this provision **(HAS) (HAS NOT)**, within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws:

- (a) Been convicted of a Federal or State felony (or has any Federal or State felony indictments currently pending against them); or
 - (b) Had a Federal court judgment in a civil case brought by the United States rendered against them; or
 - (c) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.
- (3) The Offeror **(HAS) (HAS NOT)**, within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- B. "Principals," for the purpose of this certification means officers, directors, owners, partners and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency /of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.
- C. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. A certification that any items in paragraph A of this provision exists shall not necessarily result in withholding of an award under this solicitation. However, certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- F. The certification in paragraph A of this provision is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

18. The certifications, warranties, and representations as set forth in this Appendix and part C and D of USDA-1, are hereby made.

IN WITNESS WHEREOF, the undersigned has executed this Appendix

_____ day of _____, 2001.

NAME OF FIRM: _____

SIGNATURE ¹: _____ TITLE: _____

(Typed Name of the Officer of the Company)

TYPE OF FIRM: _____
(Corporation, Partnership, Individual Proprietorship)

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE NO: _____ FAX NO: _____

E-MAIL ADDRESS: _____

¹ Before signing this Appendix, See article 6 of USDA-1, Signing Of Offers